PRIVY COUNCIL REPORTS

LIM KIM CHET & ANOR. v. MULTAR BIN MASNGUD

[P.C. (Lord Keith of Kinkel, Lord Elwyn-Jones, Lord Bridge of Harwich, Lord Brandon of Oakbrook, and Sir Robin Cooke) June 18, 1984]
[Privy Council Appeal No. 43 of 1982]

Practice and Procedure – Appeal – When appeal court can disturb finding of facts – Reasons given by trial judge unsatisfactory and in some respects contradictory of each other.

This was an appeal from the decision of the Federal Court reported in [1982] 1 M.L.J. 184. There was a collision between a motor cycle driven by the respondent and a motor lorry driven by the first appellant in the course of his employment with the second appellant. The trial judge found that the respondent had not proved his case of negligence against the appellants and held that the accident was probably caused by the fault of the respondent. The Federal Court reversed this judgment and gave judgment for the respondent on the ground that the accident was caused by the fault of the first appellant.

Held: (1) the reasons given by the learned trial judge were unsatisfactory and in some respects contradictory of each other. This was clearly a case where consistent with the principles laid down by Lord Thankerton in *Thomas* v. *Thomas*(1) the Federal Court were entitled to review the findings of fact of the trial judge and to reach their own conclusion upon the evidence;

(2) the Federal Court were right in holding that upon a proper consideration of the evidence as recorded by the trial judge the correct conclusion was that the accident was caused by the negligence of the lorry driver and that the appellants were liable in damages.

Cases referred to:

(1) *Thomas* v. *Thomas* [1947] A.C. 484, 488.

PRIVY COUNCIL APPEAL FROM MALAYSIA.

Eugene Cotran (*Mathew Varughese* with him for the appellants).

Tan Hock Kim for the respondent.

Lord Keith of Kinkel (delivering oral Judgment of the Board): This appeal from the Federal Court of Malaysia arises out of a collision which took place on January 8, 1976, in the township of Johore Bahru between a motor cycle being driven by the respondent and a motor lorry being driven by the first appellant in the course of his employment with the second appellant.

The trial judge reached the conclusion that the respondent had not proved his case of negligence against the appellants and stated that the accident was probably caused by the fault of the respondent. The Federal Court reversed his judgment and gave judgment for the respondent on the ground that the accident was caused by the fault of the first appellant.

The first and second appellants now appeal to this Board. In their Lordships' opinion the reasons for his judgment given by the learned trial judge were unsatisfactory and in some respects contradictory of each other. It seems to their Lordships that this is very clearly a case where, consistently with the principles laid down by Lord Thankerton in *Thomas* v. *Thomas*(1), the Federal Court were entitled to review the findings of fact of the trial judge and to reach their own conclusion upon the evidence.

Further, their Lordships are in complete agreement with the Federal Court that upon a proper consideration of the evidence as recorded by the trial judge the correct conclusion is that the accident was caused by the negligence of the lorry driver and that the appellants are liable in damages. The damages are not now disputed, the defendants being content to accept the assessment made by the Federal Court.

Their Lordships will advise His Majesty, the Yang di-Pertuan Agong that this appeal should be dismissed. The appellant must pay the respondent's costs.

Appeal dismissed.

Solicitors: *Le Brasseur & Bury; Charles Russell & Co.*

CHOO KOK BENG v. CHOO KOK HOE & ORS.

[P.C. (Lord Fraser of Tulleybelton, Lord Roskill, Lord Bridge of Harwich, Lord Brightman and Sir Robin Cooke) June 25 & July 23, 1984]

[Privy Council Appeal No. 42 of 1982]

Practice and Procedure – Trial judge's findings on facts reversed – Misdirection – No adequate scrutiny and consideration of all the evidence.

This was an appeal from the decision of the Court of Appeal of Singapore, reported in [1983] 1 M.L.J. 53. The case concerned a dispute involving four brothers